

No. 22-2034

**In the United States Court of
Appeals for the Fourth Circuit**

JOHN and JANE PARENTS 1
and JOHN PARENT 2,

Plaintiffs-Appellants,

v.

MONTGOMERY COUNTY BOARD OF
EDUCATION, *et al.*,

Defendants-Appellees.

**MOTION TO STAY MANDATE PENDING
FILING OF PETITION FOR A WRIT OF CERTIORARI**

Pursuant to Federal Rule of Appellate Procedure 41(d)(2), Appellants move this Court to stay issuance of the mandate pending the filing by Appellants of a petition for a writ of certiorari. In support of this motion, Appellants state as follows:

1. The decision of this Court was issued on August 14, 2023. Appellants do not intend to file a motion for rehearing. Thus, unless stayed, the mandate would issue on September 5, 2023, since September 4 is Labor Day, a federal holiday.
2. The Appellants are cognizant of Local Rule 41, which states,

A motion for stay of the issuance of the mandate shall not be granted simply upon request. Ordinarily the motion shall be denied unless there is a specific showing that it is not frivolous or filed merely for delay. A motion to stay the mandate pending the filing of a petition for certiorari must show that the certiorari petition would present a substantial question and set forth good cause for a stay.

This Motion is not frivolous nor filed merely for delay because the Appellants intend to file a petition for certiorari with the United States Supreme Court by the 90-day deadline. The substantial question and good cause requirements are addressed immediately below.

3. The Appellants' petition will present substantial questions. The decision of this Court was not unanimous, but contained a lengthy dissent that demonstrated a significant difference of opinion on the Court as to how the Supreme Court's decisions on standing are properly interpreted and applied. The dissent also demonstrated a substantial question concerning the merits of the case, stating that the district court had misapplied the law. The majority opinion also expressed that the merits issues are substantial and important, which is also demonstrated by the multiple *amicus* briefs filed in support of the Defendants in the district court and in support of both sides before this Court.

4. Good cause also exists to grant the motion. The issues involved are currently being litigated in several circuit courts, and the lower courts have reached different conclusions on the issues this case presents. The subject matter also involves important issues involving children, their parents, and the role of schools

that are being debated widely in our courts and in society at large. Thus, there is a substantial chance that the Supreme Court will grant the petition.

5. Granting the motion to stay the mandate will also foster judicial efficiency. If the stay is not granted and the mandate issues, then the case will be dismissed by the district court while the petition for a writ of certiorari is pending. If the Supreme Court later grants review and reverses, it will give overriding instructions to this Court and the district court about the next steps to be taken that may well require the district court to “undo” its dismissal. On the other hand, no harm will accrue to any party if the mandate is stayed pending disposition of the petition.

6. Appellants request that the stay be issued until November 13, 2023, the date the petition for a writ of certiorari is due at the Supreme Court. Appellants will promptly notify the clerk of this Court when it files its petition, which, pursuant to Rule 41(d)(2)(B), would extend the stay until the Supreme Court’s final disposition of the case.

7. The Appellants have informed counsel for Appellees of this motion, and Appellees object to the granting of this motion and intend to file a response in opposition.

Respectfully submitted,

/s/ Frederick W. Claybrook, Jr.

Frederick W. Claybrook, Jr.

(Counsel of Record)

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Attorneys for Appellants

August 30, 2023

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2023, I served the foregoing Appellants' Motion to Stay Mandate Pending Filing of a Petition for a Writ of Certiorari on all Counsel through the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service on those participants will be accomplished by the CM/ECF system.

s/ Steven W. Fitschen

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